

Testimony of Mary and Zach Fales, Residents of Grand Rapids, Michigan

IN SUPPORT OF SB 746 and 747

Before the House Criminal Justice Committee April 19, 2016

Good Morning Chairman Heise and committee members,

My name is Mary Fales and I am here today along with my husband Zach, to share our story, our personal connection to the issue of daycare safety and to urge the committee to report Senate Bills #746 and 747 with favorable recommendation.

Our family lives in Grand Rapids, and both Zach and I work full time at jobs outside our home. In October of 2014, we welcomed our third child into the world, our third boy actually. Cooper was an adorable, good natured, healthy baby boy, who completed our family and was absolutely adored by our two older sons who were seven and four years old at the time.

I was able to stay home on maternity leave for 2.5 months. When I had to go to back to work, we, like many other Michigan families, relied on a licensed family home daycare to care for our kids. Cooper's first day at daycare was January 20, 2015. Less than a month later, on Feb 19, 2015, our perfectly healthy, 3 month old baby boy died while at this state licensed daycare.

Losing a child is every parent's worst nightmare but the details of our case are particularly devastating. When my husband picked the boys up from daycare, our daycare provider already had Cooper in his car seat, hat on, buckled up, blanket over his legs with the car seat cover closed. It was an absolutely frigid winter day and my husband loaded everyone into the car for the 10 min drive home. We didn't discover that Cooper was deceased until they arrived home about 6:10pm. We tried CPR and paramedics did everything they could to save him. The whole terrifying scene played out in front of our two other young sons.

It wasn't until after the autopsy that we found out that Cooper actually died at least 2 hours before we picked him up from daycare, sometime before 4:10pm. The ensuing police investigation documented eleven violations of daycare licensing rules and explained that our provider lied to investigators and the police, attempted to get other daycare families to lie on her behalf and provided a timeline of Cooper's last day that does not coincide with the time of death. The most shocking violations include:

- She was caring for 10 children the day Cooper died, when she was only licensed for 6
- She was caring for 3 infants when she was only licensed for two infants at a time
- She did not have any cribs in the house and admitted that she allowed Cooper to fall asleep in his car seat (infants are ONLY allowed to sleep in cribs)
- She admitted to covering Cooper up with his car seat cover while he was sleeping in his car seat

We were heartbroken and stunned to learn this information. I want to be clear that we had been thorough in our research when we were looking for a daycare 4 years before this incident. We researched inspection reports, toured homes and interviewed many providers before we settled on this particular home. We had four years of experience at this home before Cooper died. There was no way for us to know if she had too many kids or too many infants and we had seen the cribs in her home when our kids first started attending. We trusted this person and believed her to be operating her daycare according to state licensing rules since she held a current license.

After Cooper died, our daycare provider's license was revoked for a period of two years and her 11 year old son was removed from her home. No criminal charges were brought in our case because Cooper's death is officially listed as undetermined. Without knowing the truth about what happened that day (which can only be provided by our provider), the forensic pathologist cannot say with absolute certainty that his death was the result of suffocation. Considering the number and nature of licensing violations and the fact that there was no safe sleep option even available, we feel that suffocation, and not something like SIDS, was the cause of his death. The pathologist did provide an official affidavit which explains that it is his professional opinion, suffocation was likely the cause of Cooper's death.

Daycare providers across Michigan need to understand the great responsibility they have to follow all the rules, all the time to protect Michigan's children. Our daycare provider didn't follow the rules. Instead she made conscious decisions to break the rules and put every child at that daycare in danger and we believe that Cooper died as a result.

We hope that there will still be justice for Cooper. We hope that his death isn't forgotten and that this never happens to another child in the trusted care of a licensed daycare provider. Ideally, we had hope that our daycare provider would be held accountable for her actions. By NOT prosecuting this crime, we believe it sends a message to daycare providers throughout the state that they can completely violate important licensing rules and even if children are harmed or even die, they won't be held accountable.

Daycare safety is a bipartisan issue that I am sure is extremely important to the majority of Michigan families. While we hope this never happens to another Michigan family, if it does, we hope this law will help prosecutors hold daycare providers accountable. In addition, we hope this law serves as a reminder to licensed daycare providers of how important it is to follow all the rules all the time.

To those who may be opposed to this bill with concerns that daycare costs will rise or providers will go out of business due to the risk of liability, I remind them that this bill does not add a single additional rule or requirement to the existing daycare licensing rules. Providers who are following the existing rules should not have anything to worry about. We recognize that freak accidents can and do happen and we recognize that it's possible that children could get hurt even if all rules are being met. This bill isn't meant to affect those cases.

I would liken this bill to driving laws. We all need valid driver's licenses to operate a vehicle and we are expected to follow the rules when we are driving. If we don't follow the rules, and someone dies as a result of our negligence, we can be held criminally responsible.

Nobody gets behind the wheel intending to hurt or kill another person. Likewise, I don't think daycare providers break licensing rules with the intention to harm children. But when you are operating a vehicle or caring for children, following the rules is of utmost importance to keep people safe. This bill is meant only for those cases when daycare providers break rules and consequences are deadly. You might think this type of thing never happens and shouldn't require a law to address the problem. Unfortunately, through our situation we have already met two families who lost infants in 2015 at daycare.

Many, many Michigan families have to rely on licensed daycare centers for child care and I urge the committee to report these bills with favorable recommendation because it is important to keep Michigan children safe. I would like to thank Senator Schuitmaker and Senator Hildenbrand for their responsiveness to our situation and their sponsorship of the legislation.

Thank you so much for allowing me to share our story and speak out in support of these bills.